

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 723 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NATHABHAI DAMJIBHAI PATEL

Appearance:

MR AJ DESAI, APP, for Petitioner

MS JAYSHREE C BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/08/98

ORAL JUDGEMENT

1. Junior Inspector, Weights and Measures, Amreli, received an information that Patel Soap Factory of Amreli sells detergent powder and soaps in contravention of provisions of the Bombay Weights and Measures (Enforcement) Act, 1958. He, therefore, visited the factory premises on 6th October, 1987 and, upon inspection, he found one packet of detergent not

containing the exact net weight of the contents as required to be displayed under the provisions of Section 14 of the Bombay Weights and Measures (Enforcement) Act, 1958 (hereinafter referred to as "the Act"). He, therefore, called two Panch witnesses and prepared a Panchnama of recovery of the said packet of detergent and, thereafter, lodged a complaint before the learned Judicial Magistrate, First Class, Amreli.

2. The learned Judicial Magistrate, First Class, Amreli, framed charge against the accused at Ex.7. The accused pleaded not guilty and expressed desire to face the trial. The prosecution, therefore, led evidence in support of its case and the learned Judicial Magistrate, First Class, Amreli, after considering the evidence on record, came to a conclusion that the prosecution had failed to establish the charge against the accused and acquitted the accused by judgment and order dated 5th June, 1990, which is under challenge in this appeal by the State of Gujarat.

3. Heard Mr. A.J. Desai, learned Additional Public Prosecutor, on behalf of the appellant. He has reiterated the grounds stated in the memo of appeal.

4. No one appears on behalf of the respondent. This Court has taken into consideration the arguments advanced by Mr. Desai and has also perused original record and proceedings, which are before it today.

5. The accused is charged to have committed breach of the statutory requirement of Section 14 of the Act. Section 14 runs as under :-

"14. Marking of weight or measure in sealed containers:- No person shall sell, offer for sale, expose for sale, or have in his possession for sale, any article contained in a sealed package or container unless such package or container bears thereon, or on a label securely attached thereto, a description of the net weight or measure of the article contained therein:

Provided that the provisions of this section shall not apply to an article sold, offered for sale, exposed for sale, or in possession for sale which is not ordinarily sold in transactions for trade or commerce by weight or measure:

Provided further the State Government

may, if it is satisfied that the size of any class of such packages or containers renders it impracticable to comply with the provisions of the section, by notification in the Official Gazette, exempt such class from the operation of this section."

6. It is amply clear upon plain reading of Section 14 that the provision of displaying the net weight of the contents in any packet is necessary for articles which are offered for sale or are exposed to sell or are possessed for sale. With this requirement in the backdrop, if the evidence on record is perused, the complainant who had visited the premises of the respondent, at the relevant time, states in his deposition at Ex.50 that on 6.10.1987, he visited the premises upon information that the said Patel Soap Factory is selling detergent powder. He found one packet not containing the description of the net weight of the contents of the said packet. He, therefore, called two Panch-witnesses named Babubhai and Ranchhodbhai. The said packet was seized after drawing a Panchnama. Receipt was issued to the accused for the seizure. This witness is examined at length on the touch stone of cross-examination. He states that there were number of similar packets in the said premises and none of these packets bore any label of Patel Soap Factory. It may be stated that the two Panch witnesses have not supported the prosecution case and, therefore, the prosecution case hangs on sole deposition of the complainant-Harshadkumar Bhagat. It is very clear from the deposition of this witness that he had not ascertained whether these packets were possessed by the accused-respondent for sale or they were exposed for sale by the accused. It is definitely not his case that he had purchased the packet as a customer nor it is his case that the said packet was offered to him for sale and, as such, as rightly held by the learned Magistrate, it could not have been held that the said packet was possessed by the accused-respondent in contravention of Section 14 of the Act. It transpires from the evidence that the premises which was visited by the complainant was a soap factory with the possibility of having a counter for sale, which is described as a shop. The packets did not contain any label disclosing the name of the manufacturer and, therefore, it cannot be said that these packets were the finished product meant for sale. It, therefore, cannot attract the requirement of Section 14 of the Act as the goods are not sold or offered or exposed for sale. Under these circumstances, there appears no reason to interfere with the judgment and order of the learned Judicial Magistrate, First

Class, Amreli, impugned in this appeal. I am in full agreement with the reasoning adopted by the learned Judicial Magistrate, First Class and the appeal is found to be devoid of merits and the same is, therefore, dismissed.

[A.L. DAVE, J.]

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